

STATUS CONFERENCE
BEFORE THE
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:)	
)	
Application for Certification)	Docket No.
for the Quail Brush)	11-AFC-03
Generation Project)	
<hr/>)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, MAY 29, 2012
2:00 p.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Andrew McAllister, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

David Hungerford, Advisor to Commissioner McAllister

Galen Lemei, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser

CEC STAFF PRESENT

Stephen Adams, Staff Counsel

Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Ella Foley Gannon, Attorney
Bingham McCutchen LLP

C. Richard "Rick" Neff
Cogentrix Energy, LLC

INTERVENORS

Phillip M. Connor
Sunset Greens Home Owners Association

Rudy Reyes (via WebEx)

ALSO PRESENT

Van Collinsworth (via WebEx)

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P R O C E E D I N G S

2:11 p.m.

PRESIDING MEMBER DOUGLAS: Welcome to the status conference for the proposed Quail Brush Generation Project.

I am Karen Douglas; I am the lead Commissioner on this matter. To my immediate left is our hearing officer, Raoul Renaud. To his left is Commissioner McAllister and to Commissioner McAllister's left is David Hungerford, his advisor. To my right is Galen Lemei, my advisor.

I will now ask the parties to identify themselves for the record, beginning with the applicant.

MS. FOLEY GANNON: Good afternoon, Commissioners. Ella Foley Gannon, counsel to the applicant.

MR. NEFF: And Rick Neff, Cogentrix Energy.

PRESIDING MEMBER DOUGLAS: Thank you. Staff?

MR. SOLORIO: Yes. Eric Solorio, project manager for the Energy Commission and sitting next to me is staff counsel, Stephen Adams.

MR. CONNOR: Intervenor Phil Connor on behalf of the Sunset Greens Homeowners Association.

PRESIDING MEMBER DOUGLAS: Thank you. And now let's go to the intervenors on the phone.

MR. REYES: Rudy Reyes, intervenor.

PRESIDING MEMBER DOUGLAS: All right, thank you, Mr. Reyes. Do we have Rosalind Varghese?

1 MR. REYES: I believe she sent in a letter saying
2 she couldn't make this meeting.

3 PRESIDING MEMBER DOUGLAS: All right, thank you
4 for that. Is Dorian Houser on the line?

5 (No response.)

6 PRESIDING MEMBER DOUGLAS: Okay, is Kevin Brewster
7 on the line?

8 (No response.)

9 PRESIDING MEMBER DOUGLAS: All right, thank you.
10 If intervenors join later at an appropriate break in the
11 action they can break in and introduce themselves for the
12 record. We may also ask from time to time if anyone has
13 joined us.

14 Are there any representatives of public agencies
15 in the room or on the phone today?

16 (No response.)

17 PRESIDING MEMBER DOUGLAS: All right. And I will
18 introduce the Public Adviser, Jennifer Jennings, who is in
19 the room with us. And with that I will turn this over to
20 the Hearing Officer.

21 HEARING OFFICER RENAUD: Thank you, Commissioner
22 Douglas. This is Raoul Renaud, the Hearing Officer. And I
23 should add that during the introductions we were joined by
24 Eileen Allen here at the dais, who is the Commissioners'
25 technical adviser.

1 Welcome to the status conference. We have
2 scheduled these to occur roughly on a monthly basis,
3 primarily for the purpose of giving the parties an
4 opportunity to communicate with the Committee Members
5 concerning their progress in review of the AFC and to let
6 the Committee know about any issues or problems that may
7 have arisen that might impede the schedule. We ask in
8 advance of the status conference that each party submit a
9 status report and I did receive those from each of you and I
10 thank you for those.

11 I should note that the proceeding today is being
12 recorded and also that we have a number of people on the
13 phone or who are using our WebEx computer system to
14 participate in the meeting remotely. We can hear all of you
15 all the time so if you would refrain from rustling papers
16 and making noise in your rooms that would be great. We do
17 have the power to mute you individually if you persist in
18 making noise so -- so far you're doing fine but just wanted
19 to let you know that we can hear so do refrain from making
20 any sound. Or you can mute your phone from your end as
21 well, that would also resolve it.

22 I think maybe we'll start by simply going through
23 the status conference statements -- the status reports that
24 were presented by the parties. And I should say that when I
25 refer to the parties what I mean is the applicant and the

1 staff and each of the formal intervenors.

2 The applicant's status report pretty much lays
3 out, gives us a summary of the activities of the applicant
4 so far. I wouldn't say there were any real surprises there.

5 We are expecting a supplement, Supplement number 3 to the
6 AFC to be issued by June 15th. Applicant, is that date
7 still looking feasible?

8 MR. NEFF: Yeah, that's looking very good. The
9 engineering analyses are coming to their conclusions and the
10 various technical disciplines for the environmental sections
11 in the AFC are working away on theirs so we're feeling
12 pretty good about being able to hit the 15th.

13 HEARING OFFICER RENAUD: All right, thank you.
14 And as you all know, in response to a motion to extend the
15 deadline for exchange of data requests in this matter, the
16 Committee did issue an order extending that deadline to a
17 date, I believe it's 60 days after the issuance of
18 Supplement 3. So if that were June 15th then we'd be
19 looking at roughly August 15th. And that would be for the
20 submission of data requests. It doesn't mean that all the
21 responses need to be in by then but that if you are going to
22 present data requests you need to do it by that time.

23 Okay, let me see. Now, applicant, you have filed
24 a proposed revised schedule as well as the staff, the staff
25 also filed a proposed revised schedule. And I noted the

1 date of July 31st, 2012 for the Comprehensive Biological
2 Survey Report. And the only reason I raise that is that the
3 staff's proposed schedule says that would be July 6th,
4 whereas your schedule, applicant, says July 31st. And since
5 that's a place you apparently are out of sync by about three
6 weeks maybe we should just discuss that briefly with an eye
7 toward finding what's a realistic date. Because the
8 Committee is going to need to prepare a revised schedule
9 based on our discussion today. Ms. Foley Gannon, you want
10 proceed?

11 MS. FOLEY GANNON: From our perspective, part of
12 the reason that this got pushed out is that the information
13 that informs this report is based largely on the surveys
14 that are being conducted, the additional surveys that are
15 being conducted this spring. As you know It has been a very
16 dry spring and there's been some kind of unusual weather
17 conditions that have happened that have changed some of what
18 we anticipated to be the survey window, some of them by as
19 much as I think three, four maybe five weeks.

20 And so because of that it -- we were just trying
21 to allow a time period where we could say, we know we can
22 get it done by July 31st. It may be possible for us to get
23 it done earlier than that but we were trying to set a date
24 that we knew we would be able to get the response. We will
25 be submitting some of the surveys to the service. We might

1 be able to get some feedback from them on the surveys and we
2 can have our comprehensive report in by that date. So that
3 was our thinking in putting the schedule together.

4 HEARING OFFICER RENAUD: All right. Now staff,
5 you have got the date of July 6 for that report. If that
6 were changed to July 31st would that impact your subsequent
7 dates such as the Preliminary Staff Assessment and so forth?

8 MR. SOLORIO: Yes, it would.

9 HEARING OFFICER RENAUD: All right.

10 MR. SOLORIO: By the same amount of time. Because
11 we are also planning to hold a workshop on biological
12 resources. I'd like to also note, the dates in staff's
13 proposed revised schedule for the workshops, they are
14 basically placeholders. We're planning the workshop
15 approximately at the end of June, end of July. And I wanted
16 to note that because the June 28th date, again, was just a
17 placeholder but it happens to be the same date as the San
18 Diego Planning Commission hearing where they are going to
19 consider accepting the application. So we will not hold a
20 workshop on that date.

21 HEARING OFFICER RENAUD: All right. Well the
22 Committee, as you know, does not involve itself in setting
23 up or participating in workshops so we are not too concerned
24 about those precise dates. It is nice to know that you are
25 planning a workshop around the end of June but exactly which

1 date you hold it isn't really a concern of the Committee.

2 MR. SOLORIO: Thanks.

3 HEARING OFFICER RENAUD: As long as you
4 appropriately notice it and so on, which you are quite good
5 at. Okay, that said, that's very useful information for the
6 Committee to have in considering the revisions to the
7 schedule so thank you.

8 And currently then each of you has in your
9 proposed revised schedule, Preliminary Staff Assessment of
10 September 20 and Final Staff Assessment, FSA, of November
11 29th. Mr. Solorio, staff, I would assume that in your case
12 if the biological report were three weeks later than your
13 July 6th date then you would suggest we would move those
14 two, the PSA and FSA dates up three weeks as well, right, or
15 three weeks later?

16 MR. SOLORIO: Yes, that's correct.

17 HEARING OFFICER RENAUD: Okay. Applicant, any
18 comment on that?

19 MS. FOLEY GANNON: I would just ask if we could
20 talk to our biologist following this status conference and
21 see if there is a way that they believe that they can move
22 that up. Again, we were being conservative in our estimate.
23 But if it is going to control the scheduling for the staff
24 assessments, you know, I think we would like to try to keep
25 as close to these dates as we can, recognizing that some of

1 these things can push it back. So if we can check with our
2 technical folks after this and then get back with an update
3 on the proposed submittal of that report we'd appreciate
4 that.

5 HEARING OFFICER RENAUD: Sure. Send an email to
6 everybody on the service list and that would be fine, thank
7 you.

8 MS. FOLEY GANNON: Okay, we will do so, thank you.

9 HEARING OFFICER RENAUD: All right, great. Okay,
10 moving through the status report, continuing through the
11 status reports. You have indicated, applicant, that the
12 PDOC, the Preliminary Determination of Compliance, is
13 expected to be completed by the end of June. That's still a
14 good date?

15 MS. FOLEY GANNON: We believe it is, yes.

16 HEARING OFFICER RENAUD: All right, all right,
17 good. Anything you wish to add, applicant, regarding the
18 status or anything else you'd like to speak to the Committee
19 about before we move on to the staff status report?

20 MS. FOLEY GANNON: Not at this time, thank you.

21 HEARING OFFICER RENAUD: All right.

22 Okay, staff, I think -- let's see. You're
23 indicating, staff, the Preliminary Determination of
24 Compliance at the end of July, which is -- no, that's the
25 same. Okay, that's good. So no problem there.

1 All right, anything you wish to add or advise the
2 Committee at this time, staff?

3 MR. SOLORIO: No. With regard to the schedule, as
4 long as the applicant stays on track with the submittals
5 that are identified in their status report we're fine.

6 HEARING OFFICER RENAUD: Very good, all right.
7 Okay. Let's move to the status reports from the
8 intervenors. Rosalind Varghese, you're not there, right? I
9 just wanted to double-check and make sure you haven't joined
10 us.

11 (No response.)

12 HEARING OFFICER RENAUD: Okay.

13 MS. JENNINGS: Hearing Officer Renaud, sorry.

14 HEARING OFFICER RENAUD: Yes.

15 MS. JENNINGS: Ms. Varghese notified me she would
16 not be able to participate. And Mr. Houser notified the
17 Committee he would not be able to participate today.

18 HEARING OFFICER RENAUD: All right, thank you very
19 much. Okay, I have nothing -- everything in Ms. Varghese's
20 status report is clear to me and I don't think I have any
21 questions about that.

22 The same with that of Dorian Houser.

23 Mr. Connor, Sunset Greens, anything you wish to
24 advise the Committee regarding your status report or the
25 status of this matter? Your status report is concise and

1 clear.

2 MR. CONNOR: Thank you. I had hoped that we would
3 be able to talk more specifically about the -- having a
4 proposed settlement conference at some point in the near
5 future but we are not quite ready to do that. I intend to
6 contact the applicant or the applicant's counsel directly.

7 HEARING OFFICER RENAUD: I noted you did mention a
8 settlement conference in your --

9 MR. CONNOR: Right.

10 HEARING OFFICER RENAUD: -- status report. What
11 do you mean by a settlement conference? I know what I think
12 it means but I am curious to know what you think it means.
13 Because it is not something we normally, that's not a term
14 we normally use in these proceedings.

15 MR. CONNOR: I understand. And I would like to
16 explore the possibility of finding out what issues are not
17 in dispute so that we can streamline the hearing and put on
18 a more efficient hearing if it gets to that point. And find
19 out issues we may be able to agree with the applicant about
20 and what we disagree about.

21 HEARING OFFICER RENAUD: Okay. I think as the
22 review proceeds that will become more and more clear. But
23 it is often not until the Preliminary Staff Assessment is
24 filed that you can really get a sense about which topics are
25 not in dispute. But certainly any early attempts to make

1 determinations about that are a good idea. Would you be
2 thinking of the settlement conference as something that
3 would be sponsored and run by the Committee or more in the
4 form of a workshop where the parties would discuss these
5 things? And again, in our kind of common usage in these
6 proceedings, something like that would normally be done in a
7 workshop setting where you would not be in the presence of
8 the Committee.

9 MR. CONNOR: It would, you know, strictly I think
10 be within the purview of perhaps yourself to set the
11 boundaries or the conditions or the format. But I think
12 that if we could do some of our homework outside that it
13 would speed it all along.

14 HEARING OFFICER RENAUD: All right, okay, good.
15 In addition to the workshops which are conducted fairly
16 regularly in these cases before the evidentiary hearing we
17 also hold a prehearing conference and that's sort of the --
18 that's the final meeting where the parties determine which
19 issues are contested and which are not. And at that point
20 the parties are pretty much lining up their evidence and
21 their witnesses and so on. So there are numerous
22 opportunities to determine which issues are disputed and
23 which are not.

24 But I would think the workshops that are upcoming
25 might be your first resort to attend those and participate.

1 I think you'll have an opportunity there to see which
2 issues are disputed and which aren't. Would staff or
3 applicant care to comment on that whole topic of settlement
4 and determination of which issues are in dispute and which
5 aren't?

6 MS. FOLEY GANNON: I think we agree with your
7 characterization that generally going through the process we
8 can usually identify where there's disagreements and
9 attempting to address them in workshops is something we
10 support.

11 MR. CONNOR: Okay.

12 MR. SOLORIO: I'd like to add a little something
13 and probably more for just giving you some background on the
14 process. Generally the staff uses the workshops to try to
15 resolve differences, or recognize that we are not going to
16 resolve them and understand that's going to have to be
17 resolved in a hearing.

18 But the staff relies on a staff assessment as our
19 testimony, our evidence to argue our case. And so to the
20 extent that you are not going to rely on our staff
21 assessment you have some other evidence to develop. I would
22 be happy to work with you to coordinate these workshops to
23 the extent that the applicant is willing to participate if
24 you want to discuss the issues in the same manner that the
25 staff is in terms of air quality, bio, et cetera.

1 MR. CONNOR: Right.

2 MR. SOLORIO: But ultimately it really comes down
3 to the impact analysis and the LORS compliance. So I don't
4 know what you guys are doing in terms of --

5 MR. CONNOR: Impact analysis and what?

6 MR. SOLORIO: And the LORS compliance, the
7 compliance with the laws --

8 MR. CONNOR: Okay. I think we're pretty much on
9 the same page. The language I may have used and theirs may
10 be a little bit -- I thought it was within the purview of
11 the additional hearings or meetings provision of the rules.
12 I don't think it's ever a problem to meet and try to
13 resolve issues ahead of time.

14 HEARING OFFICER RENAUD: It's not only not a
15 problem, it's welcomed and it's really the best way to
16 proceed so than you for raising that. We always encourage
17 those types of efforts regardless of what we call them. If
18 we call them settlement conferences, workshops or anything
19 else it's a good thing to do.

20 MR. SOLORIO: Thank you, Mr. Solorio.

21 HEARING OFFICER RENAUD: Okay, thank you. And
22 Rudy Reyes, you submitted a status report, thank you.

23 MR. REYES: Yes, sir.

24 HEARING OFFICER RENAUD: Again, there's --

25 MR. REYES: Can I --

1 HEARING OFFICER RENAUD: Yes, go ahead, please.

2 MR. REYES: As intervenors can we have access to
3 the confidential cultural data that has been collected so we
4 can at least review it to be able to make a comment on it?

5 HEARING OFFICER RENAUD: You know, that depends
6 really on the wording of the order regarding the
7 confidentiality. Staff counsel, is that something you can
8 speak to, for Mr. Reyes? I think it varies from case to
9 case.

10 MR. REYES: Yes, yes, I understand, but I've got
11 to make the request.

12 HEARING OFFICER RENAUD: Steve Adams is staff
13 counsel for the --

14 MR. ADAMS: Steve Adams, staff counsel. I do not
15 believe typically when a confidentiality order is issued the
16 confidential material is made available to intervenors. I
17 can explore how that might happen, or at least the avenue
18 for raising that issue for the intervenors.

19 HEARING OFFICER RENAUD: Thank you.

20 MR. ADAMS: It may take a -- you know, it might be
21 considered in the context of a confidentiality agreement on
22 the part of the intervenors, I don't know.

23 MR. REYES: Right.

24 HEARING OFFICER RENAUD: Ms. Jennings --

25 MR. REYES: Well, as it is I -- I personally have

1 two degrees in archaeology and I have a professor willing to
2 oversee. And I believe it would just be requesting -- give
3 me one second to get the correct term. But I believe it
4 would just be requesting a -- I apologize as I look up a
5 terminology.

6 MS. JENNINGS: Mr. Reyes.

7 MR. REYES: It's called (audio cut out)
8 information.

9 HEARING OFFICER RENAUD: Jennifer Jennings the
10 Public Adviser has stepped to the mic and she has got
11 something to say about this.

12 MS. JENNINGS: Yes, Jennifer Jennings, Public
13 Adviser. Yes, Mr. Reyes, as I indicated to you in my
14 emails, I will help you file a petition to inspect a copy of
15 confidential data. And that likely if that were to be
16 successful you would have to file a non-disclosure
17 agreement.

18 MR. REYES: Perfect, that's exactly it.

19 MS. JENNINGS: So it has, it has to be in writing,
20 as I said.

21 MR. REYES: Perfect. Okay, that's what I was
22 asking about.

23 HEARING OFFICER RENAUD: All right, good, thank
24 you. Mr. Reyes, are you still there?

25 MR. REYES: Yes.

1 HEARING OFFICER RENAUD: Okay.

2 MR. REYES: Yes.

3 HEARING OFFICER RENAUD: In your status report
4 there isn't anything that I need to ask you about except one
5 thing.

6 MR. REYES: Yes.

7 HEARING OFFICER RENAUD: I am reluctant to do so
8 but I am going to anyway because you mention possible
9 bribery. And I want to let you know that if you are aware
10 of facts which lead you to believe that there may be
11 something of that nature going on somewhere you probably
12 ought to bring it to the attention of the district attorney
13 for your county.

14 MR. REYES: Yes.

15 HEARING OFFICER RENAUD: That is not the kind of
16 thing we deal with here at the Energy Commission. I wanted
17 to let you know that.

18 MR. REYES: (WebEx faded) through the procedure
19 and that's what we have done.

20 HEARING OFFICER RENAUD: All right, thank you very
21 much. Good.

22 MR. REYES: A-ha.

23 HEARING OFFICER RENAUD: Okay. And Mr. Brewster,
24 have you come on the line yet?

25 (No response.)

1 HEARING OFFICER RENAUD: No, okay. We received a
2 filing from Mr. Brewster but it didn't really have any
3 substance in it, it was just a cover page. So I did send
4 Mr. Brewster an email and ask that he correct that but we
5 didn't get anything further.

6 Okay, I think that pretty much covers the
7 territory I wanted to cover. Do the Commissioners or
8 Advisors have anything they want to bring up at this point?
9 No? Anybody? All right.

10 We do have another status conference scheduled for
11 June 25th and status reports due in the middle of June.

12 Anything the parties wish to add at this point
13 before we turn to public comment? Applicant?

14 MS. FOLEY GANNON: Nothing on behalf of the
15 applicant, thank you.

16 HEARING OFFICER RENAUD: All right. Staff,
17 anything further?

18 MR. SOLORIO: Just to the extent that the -- you
19 know, we have quite a few intervenors now. That they also
20 have a desire to try to engage the applicant on these issues
21 the same way Mr. Connor has described his desire to identify
22 issues and work through them. They can contact me and I'll
23 help coordinate a workshop with them to try to get some of
24 that done.

25 HEARING OFFICER RENAUD: Very good, thank you for

1 that encouragement. I think it's good to keep the lines of
2 communication open amongst the parties, that's excellent.

3 Okay, any of the intervenors on the line care to
4 add anything before we turn to public comment? I'm sorry,
5 Mr. Connor, you're in the room, I'll turn to you first.

6 MR. CONNOR: Thank you. On May 1st the applicant
7 sent a letter that proposed to change the character of the
8 plant. And I don't want to put a spin on it so I'll just
9 say that they wanted to take it from a 3800 hour limit to a
10 potentially unlimited plant and use the emissions as a
11 standard. And I would like to hear from anyone, applicant's
12 counsel or staff, on what the process will be or could be
13 in dealing with that proposal because I think that there --
14 we have some grave concerns about it.

15 HEARING OFFICER RENAUD: Ms. Foley Gannon?

16 MS. FOLEY GANNON: Yes. We have made the request,
17 as you see from the letter that was docketed, to the APCD
18 for them to adopt the same approach that was used in Pio
19 Pico as to how they set the limits. Essentially what it is
20 is that we are requesting -- and Mr. Neff can speak to it a
21 little bit more technically than I can.

22 But we are asking that we look at the sort of
23 clustering of emissions. So instead of sort of looking at
24 each stack individually -- as you know there's 11 stacks.
25 There's two ways you can do the analysis, you can look at

1 each one individually, which just means that you're kind of
2 doing the analysis and the compliance on a stack-by-stack
3 basis or you can look at it as what were called clustered,
4 looking at the 11 total.

5 And the same limitations apply to the emissions
6 that would be allowed and permitted from the entirety of the
7 plant, it just allows for, first off, more flexibility in
8 terms of when -- which engine is being turned on at which
9 time. But again, it has the same limitations, it just
10 allows for more flexibility.

11 And then in terms of operations from the plant, it
12 allows for a significant reduction in paperwork because the
13 amount of compliance monitoring you have to do for each one
14 of the limitations, if you have to do it on a stack-by-stack
15 basis, it's just -- it's a lot of -- it's a lot of
16 paperwork. And you can get the same information if you are
17 looking at it as a totality. And again, that's my lay-
18 person's presentation of the information. Maybe Mr. Neff
19 can speak further to this issue as well.

20 HEARING OFFICER RENAUD: Please.

21 MR. NEFF: And really what we're looking at is we
22 did not ask to extend the number of hours of the plant. The
23 total tons emission is the same as it has been in the
24 original applications. And tons or hours, hours or tons.
25 Looking at some of the more recent draft Title 5 permits

1 that come from the agencies, really what we were looking at
2 is we saw ourselves going down a path where every month
3 would be 11 EDRs, electronic data reports. You know,
4 possibly 11 EERs. And this is about one-quarter of the
5 paperwork you generate for one EDR. And dealing with 11 of
6 them and the maintenance of the records, we saw that as
7 being a logistical bottleneck.

8 Some of the later actions that not only the San
9 Diego APCD but some of the other AQMDs and APCD in the state
10 are doing in writing their permits, they're looking in that
11 clustered approach where they take the total tons. The only
12 clarification I'll make from Ms. Gannon's statement, the
13 monitoring will remain the same. Each stack will have the
14 CEMS, there will be the probes for the required parameters
15 in the CEMS. All of that data goes through our computer and
16 it goes straight to EPA and the state.

17 It's the follow-on paperwork which goes along with
18 that for all of the compliance part of the monitoring. And
19 that was really -- it was to streamline a paperwork issue
20 that we were looking at. The tons are the same now for all
21 the parameters as they were as what we submitted for. You
22 have the emission rates per hour times the number of hours,
23 you get the number of tons.

24 HEARING OFFICER RENAUD: Mr. Solorio, are you
25 familiar with this issue? If you are I'm wondering if you

1 have any comment on how that is going to affect the staff's
2 analysis?

3 MR. SOLORIO: Happily I leave this to the air
4 quality engineers.

5 HEARING OFFICER RENAUD: All right. Mr. Connor,
6 does that satisfy your concerns or answer your question?

7 MR. CONNOR: Not really. The concern is that the
8 change in the metric would actually permit the plant, all
9 11, to run continuously over a long period of time. And
10 whether it would be -- the emissions would be measured
11 daily, monthly, weekly or whatever. And that it causes a
12 great deal of paperwork is not a great deal of concern to
13 the people who are going to be breathing the emissions.
14 That's frankly the least of our concerns right now.

15 And if it burdens the applicant, you know, that's
16 the burden that they assumed going into this project. And I
17 don't think that a change in the metric at this time that
18 changes it from a peaker plant to a full-time plant, a
19 potentially full-time plant, is something that we should
20 leave to the issue of LORS.

21 HEARING OFFICER RENAUD: Okay.

22 MR. CONNOR: And the problem is, is that engineers
23 could speak to engineers and make a compelling argument
24 about the way of measuring the emissions. And Mr. Neff's
25 contention that tons are hours, hours are tons, that is

1 somewhat of a disingenuous statement. And it's nothing
2 personal. But if it's measured over six months, the plant
3 could run six months continuously and those could be some
4 very, very dangerous six months for the people that live
5 near the power plant.

6 HEARING OFFICER RENAUD: Here is the concern I
7 have about this discussion that we are having right now.
8 This is a status conference and we are really here to
9 discuss how things are progressing in the process of
10 reviewing the AFC. The applicant has submitted a document
11 or a request to the air board and that matter is now before
12 the air board. If you have concerns about that request --
13 and I am not giving you legal advice. But it sounds to me
14 as though the best place for your input now is at the air
15 board.

16 MR. CONNOR: I don't disagree with that,
17 Mr. Renaud.

18 HEARING OFFICER RENAUD: When we get to the point
19 where we have evidentiary hearings in this matter the air
20 board reports will be part of the evidentiary record, --

21 MR. CONNOR: But my specific question was this.

22 HEARING OFFICER RENAUD: -- as will any evidence
23 you have to put in.

24 MR. CONNOR: Excuse me.

25 HEARING OFFICER RENAUD: Go ahead.

1 MR. CONNOR: My specific question was this. Will
2 the CEC, and yourself as the hearing officer, treat the
3 issue before the air board as dispositive, you know,
4 resolved by LORS, if they decide to follow Mr. Neff's advice
5 that tons are hours and hours are tons. And that when it
6 comes back before here with a decision to approve that
7 different metric that that is -- I don't know what better
8 phrase to use than res judicata. It's resolved as far as
9 LORS are concerned and it can't be before the CEC.

10 HEARING OFFICER RENAUD: I'll ask Mr. Solorio to
11 comment on that. Go ahead.

12 MR. SOLORIO: So staff does work, obviously, very
13 closely with the air board. Staff also does its own
14 independent analysis, including our own modeling. And so we
15 are in fact looking for LORS compliance and compliance with
16 the Clean Air Act but we are also analyzing the air
17 emissions, criteria pollutants for CEQA impacts, which is a
18 very different standard. Not completely different but it is
19 different from the Clean Air Act. So we do an independent
20 analysis.

21 HEARING OFFICER RENAUD: So does that answer your
22 question, Mr. Connor? The staff doesn't just rely solely on
23 the air board, they do their own analysis as well. Not only
24 from the point of view of compliance with LORS but also
25 compliance with CEQA. And they do a separate public health

1 analysis so there's really more than just the one level of
2 review. Nonetheless, if you have input at this point, the
3 matter is at the air board, that's probably one place to go.
4 When we get to the evidentiary hearing portion of this
5 matter, if you want to weigh in on it you would need to have
6 evidence yourself.

7 MR. REYES: This is Rudy Reyes, one of the
8 intervenors.

9 HEARING OFFICER RENAUD: Yes, Mr. Reyes.

10 MR. REYES: Now from what I just heard of that,
11 that change from limited use to unlimited use as a standard,
12 and then I heard the flexibility and the fact there's less
13 paperwork, and there's Title 5 with the EERs being what they
14 are it creates less paperwork. But at the same time I heard
15 less maintenance because it causes a logistic bottle-
16 necking. Less monitoring through streamlining, that means
17 less safety. I'll bring up the San Bruno fires and the fact
18 that that was the exact same plant as this one is for the
19 most part, and they blew out and hurt a ton of people. So
20 where is this going to be brought up in the fire issues of
21 the fact that this may cause a big issue. And the fact that
22 less monitoring, less maintenance, because of the fact that
23 you are trying to avoid less paperwork, might cause a safety
24 concern.

25 HEARING OFFICER RENAUD: Well I can tell you

1 again, procedurally, because this is a status conference and
2 not the forum to argue the pros and cons of the project,
3 that part of the staff analysis and the Commission decision
4 includes the safety aspects of the project. So that is one
5 area that is covered.

6 MR. REYES: That's all at a workshop.

7 HEARING OFFICER RENAUD: Yes.

8 MR. REYES: Okay, I understand.

9 HEARING OFFICER RENAUD: Good, all right.

10 Mr. Adams, yes.

11 MR. ADAMS: I'm sorry. Staff does believe this is
12 the kind of issue that is effectively dealt with in
13 workshops. So as we plan the air quality workshop we can be
14 in touch with intervenors. And from what I am hearing from
15 the applicant they are saying there are no more total hours
16 of operation of the plant involved in this.

17 But it sounds like there is a concern about
18 whether this could allow more intense operation during
19 particular time periods. The staff analysis generally is
20 predicated on the most, the worst assumptions and the worst-
21 case scenario. So it's not that that would be overlooked in
22 the staff analysis if this allowed for more intensive use
23 over a certain period of time.

24 HEARING OFFICER RENAUD: Okay, thank you,
25 Mr. Adams.

1 MR. CONNOR: I have another happy issue,
2 Mr. Renaud, if I may?

3 HEARING OFFICER RENAUD: Just before we get off
4 that topic let me -- let me -- Ms. Allen I think has
5 something -- wants to weigh in on this as well, technical
6 advisor to the Commissioners.

7 ADVISOR ALLEN: Can you hear me?

8 HEARING OFFICER RENAUD: Yes.

9 ADVISOR ALLEN: I wondered whether Mr. Solorio or
10 Mr. Adams or perhaps Mr. Davis could talk about the role
11 that the air quality staff has in commenting on the draft
12 Preliminary Determination of Compliance. My understanding
13 is that the air quality staff routinely provides the air
14 district with comments on issues such as that raised by
15 Mr. Connor. So there is an opportunity there for the
16 Preliminary Determination of Compliance to be subject to
17 some adjustment before it's published. Have I got that
18 right?

19 MR. SOLORIO: Yes, that's correct. We absolutely
20 review it and do comment on it. Quite often we do suggest,
21 through our comments, changes in the Preliminary
22 Determination.

23 HEARING OFFICER RENAUD: That's a document anybody
24 can comment on, correct, any member of the public?

25 MR. SOLORIO: And we take a special interest in

1 it, of course, because it applies to a joint review.

2 HEARING OFFICER RENAUD: So any person having an
3 interest in that proceeding can submit comment?

4 MR. SOLORIO: True.

5 HEARING OFFICER RENAUD: Including you,
6 Mr. Connor. That's what I'm getting to. All right, you
7 indicated you have another issue.

8 MR. CONNOR: Thank you. This issue is to the
9 scope of the review of the staff and the clarification of
10 their duty to find out while we are in this process here,
11 this stage of the siting issue. And I think it is best
12 exemplified by staff's data request number 74. To refresh
13 everybody's recollection, it was a request for the applicant
14 to clarify the evacuation plan for the plant itself and for
15 the operators of the plant.

16 Separately and distinctly I had asked a question
17 in our HOA's data requests regarding the evacuation plan for
18 the surrounding community because this is a -- I think the
19 language is, I may be wrong about this, but an extremely
20 high fire danger area.

21 The question is, it seems to me in my reading of
22 the rules and the law that the scope was unnecessarily
23 narrow in that the staff should have been asking for a more
24 broad evacuation plan for the community because of the
25 siting of this and because it was in an extremely high fire

1 danger area. Am I wrong about that or do we need to request
2 that the staff expand their scope to be more protective of
3 the public in general?

4 I am not trying to diminish the need to protect
5 the people that are in the power plant if it's built but I
6 am talking about a ratio of 8 or 11 people operating there
7 versus the potentially thousands in the neighborhood. And
8 as we are one intervenor on behalf of 119 homes, of maybe
9 300 people.

10 HEARING OFFICER RENAUD: Okay.

11 MR. CONNOR: And I don't know that we have, we
12 should have the burden of protecting the public at large and
13 who does that burden fall to?

14 HEARING OFFICER RENAUD: So just so I am clear in
15 my mind about your question. Is your question about
16 expanding the scope of staff's data request or about
17 expanding the scope of the amount of protection?

18 MR. CONNOR: Well.

19 HEARING OFFICER RENAUD: Because I don't think
20 they have an answer to the data request yet so you don't
21 know what that is.

22 MR. CONNOR: No, but it's the asking of the
23 question that creates the scope, sir.

24 HEARING OFFICER RENAUD: Okay.

25 MR. CONNOR: It's the asking of the question.

1 HEARING OFFICER RENAUD: So --

2 MR. CONNOR: They're asking the question about the
3 internal power plant evacuation plan. It begs the question,
4 you know, why isn't there an evacuation plan request for the
5 community. Because that is really the -- that is the
6 danger, that is a much greater public danger. And that
7 seems to me -- we are here to protect the public in this
8 process.

9 HEARING OFFICER RENAUD: Okay. I see Mr. Solorio
10 has something to say about this.

11 MR. SOLORIO: I think that Mr. Connor perhaps
12 misunderstood the data request. It was asked in the context
13 of wildfires. If there is another event, as there has been
14 in the past, of wildfires in the area, how would the owner
15 of the project deal with that in terms of the safety of the
16 workers and shutting down the plant. That's the context for
17 evacuating the plant.

18 HEARING OFFICER RENAUD: All right. And I will
19 add, Mr. Connor, that as an intervenor, and you know this
20 because you have already submitted data requests, if you
21 want information from the applicant that has not be
22 requested by the staff you can submit a data request.

23 MR. CONNOR: Okay. But remember, I started out by
24 saying it's an issue of scope, of the issue of finding out
25 by the staff. I understand, Mr. Solorio, what your question

1 was, I read it a number of times. But the question is, you
2 know, the staff should be taking direction from the
3 Commission. And the Commission, I would think, has a duty
4 to protect the public at large. And since this is an
5 extremely high fire danger zone, what is it that should be
6 the scope of the inquiry by the staff beyond just the
7 confines of the proposed project itself? That's the
8 question I'm asking.

9 HEARING OFFICER RENAUD: Well again, I think
10 public safety is addressed in many ways in Commission
11 decisions and those decisions reflect the evidence that's in
12 the record. And those decisions also reflect the compliance
13 with the applicable laws, ordinances, regulations and
14 standards. Something like that is probably most
15 appropriately a LORS issue.

16 If when we get to the evidentiary hearings part of
17 this case, you or the homeowners association wants to put in
18 evidence that here is the standard rather than what staff
19 says is the standard, you should plan to do that. Because
20 the Committee will be very, very interested in any evidence,
21 testimony and so on that relates to any of the issues in the
22 review.

23 So I guess I'm thinking your question is premature
24 because we aren't, we don't have the evidentiary record yet.
25 You are anticipating what the -- what the safety standard is

1 or will be in advance of the Committee's having had an
2 opportunity take evidence on it. And I say that with
3 complete respect. And I know our process is complicated and
4 sometimes a little bewildering. But if you have a
5 particular position or opinion concerning what is the
6 appropriate level or standard for public safety. That's an
7 evidentiary issue that the Committee would be very
8 interested in hearing from you about.

9 MR. CONNOR: Thank you.

10 HEARING OFFICER RENAUD: Okay? Does that help? I
11 hope that helps. All right. I think staff asks the data
12 requests that it feels it needs in order to accomplish its
13 review. And if you would like to ask different ones or more
14 expanded ones and so on, that's your right and you should do
15 it. Okay. Anything else, Mr. Connor?

16 MR. CONNOR: I don't think so.

17 HEARING OFFICER RENAUD: All right, thanks.

18 Anything from any of the intervenors on the phone?
19 I believe that's Mr. Reyes. Anyone else?

20 MR. REYES: Okay. Let me see. I think what I
21 heard from the last move or whatever was on the table was
22 the gentleman was asking for a higher standard be set. Just
23 due to the fact that there is so much history with fires and
24 the, you know, possibility of an issue of this plant having
25 fires. So I think, honestly, that's all he was asking is

1 that a higher standard be set. Other than that, I'm pretty
2 good and happy right now.

3 HEARING OFFICER RENAUD: All right, thank you very
4 much. Then I think what we should do at this point is turn
5 to public comment. We have at the end of every Commission
6 or Committee proceeding or hearing of any sort we provide an
7 opportunity for members of the public to address the
8 Committee. And let me ask first if there is anyone here in
9 the hearing room who wishes to provide a public comment?

10 (No response.)

11 HEARING OFFICER RENAUD: All right, seeing none,
12 is there anyone on the phone or on WebEx who wishes to
13 provide a public comment? If you do just simply speak up.

14 MR. COLLINSWORTH: Yes.

15 HEARING OFFICER RENAUD: Yes, go ahead.

16 MR. COLLINSWORTH: Yeah, this is Van Collinsworth
17 in Santee, I have been listening in. I have a question and
18 a comment. The first is I would like to know what the
19 status is of developing any real alternatives to the project
20 because I haven't seen any yet.

21 Then I'll just continue with my comment. I want
22 to also update you on the status of the public opposition to
23 this project. It's huge and it's growing and people in this
24 area of San Diego are very upset with this whole thing.
25 I'll give you just one example in terms of what the San

1 Diego River Coalition has just voted to send a letter of
2 opposition, basically standing up for our local laws and
3 ordinances and standards, many of which this project
4 violates. And there's plenty of other organizations that
5 will probably be doing the same thing shortly.

6 There's public officials that are speaking out in
7 opposition to the changing of the local laws and ordinances.

8 When the applicant went to Tierra Santa and asked for that
9 town council to support the initiation of their changes that
10 body chose not to do so. And since they were unsuccessful
11 there they pulled it from the agenda at Navajo. So this
12 project is failing at the local level. Why? Because it is
13 in contradiction, it's completely incompatible with
14 everything about this site. And so we find it highly
15 distasteful that the state continues to advance this
16 operation when it's a no-go at the local level.

17 I'll stop there, if you could address my question.

18 HEARING OFFICER RENAUD: All right, thank you.
19 Yes, we'll see if we can address your question. I would
20 like to state though, for the record, that at least as far
21 as the -- from the Commission's point of view, the
22 Commission is not advancing the project if by that you mean
23 proposing it, favoring it. The applicant has filed an
24 Application for Certification and it is the Committee's job
25 to oversee the review of that and issue a decision and

1 that's what is going on here.

2 Does either applicant or staff have anything to
3 offer in response to the question about alternatives?

4 MS. FOLEY GANNON: On behalf of the applicant, I
5 think as we discussed at our last status conference, we have
6 submitted in the AFC what we believe to be a reasonable
7 range of alternatives as required by CEQA and the
8 Commission's regulations. We have received a number of data
9 requests about this. We will be filing our 20 day letter to
10 Houser's data request this afternoon that addresses it.

11 But in sum, we believe that the project objectives
12 here for this project to be sited near existing
13 infrastructure necessary to support the plant, specifically
14 the transmission line and the gas lines, without any major
15 upgrades, is a legitimate project objective and therefore
16 you consider a reasonable range of alternatives in light of
17 those objectives. So we don't believe that there are other
18 sites that meet those objectives. And again, we will be
19 responding to data requests and that's how we have
20 approached the issue.

21 HEARING OFFICER RENAUD: Staff, on the
22 alternatives question at all, anything to add?

23 MR. SOLORIO: I'd like not to give real specific
24 answers about our draft work product until we actually reach
25 a conclusion or are ready to publish that. I would just

1 like to say that the alternatives analysis will be robust
2 and we do plan to issue a very comprehensive set of data
3 requests revolving around the range of alternatives that
4 staff selects at the end of the day.

5 HEARING OFFICER RENAUD: All right and thank you.

6 And I will -- this is Raoul Renaud. I will just add also
7 that the alternatives analysis is a significant part of the
8 review process as well as a significant part of the
9 Committee proposed decision so it is taken quite seriously.

10 And people obviously have differing opinions about the --
11 whether or not the alternatives analyzed are adequate.
12 Those are ultimately complex legal questions. But the
13 Committee and the Commission do everything in their power to
14 ensure that a legally sufficient range of alternatives is
15 analyzed. Okay, thank you.

16 Is there any further public comment?

17 (No response.)

18 HEARING OFFICER RENAUD: Okay, I am not hearing
19 any. Mr. Connor, I see --

20 MR. CONNOR: I have one follow-up that I got from
21 one of my homeowners that is on the line.

22 HEARING OFFICER RENAUD: Go ahead.

23 MR. CONNOR: And that is the question of
24 Mr. Neff's comment tons are hours and hours are tons. The
25 thing that makes that disingenuous (sic) -- and I wasn't

1 trying to make a personal comment, Mr. Neff. What makes
2 that disingenuous is the ability of an applicant to purchase
3 pollution credits. I don't know whether this is the
4 appropriate forum or not but I am going to ask if the
5 applicant would agree to make not purchasing additional
6 pollution credits part of their permit? So that would make
7 the hours are tons, tons are hours equation, equal. To not
8 have that in there is what makes it unequal.

9 HEARING OFFICER RENAUD: Well I am not going to
10 require the applicant to answer that question right now but
11 that's the kind of thing you could discuss in a workshop.
12 That would be --

13 MR. NEFF: Yeah, that's what I was going to say.
14 I look forward to the workshop on it because I think there
15 is a misunderstanding on how air emissions are calculated,
16 monitored and reported.

17 HEARING OFFICER RENAUD: All right, thank you.

18 MR. SOLORIO: Could I add one thing?

19 HEARING OFFICER RENAUD: Mr. Solorio, yes.

20 MR. SOLORIO: Air quality is one of the primary
21 issues that, at least that I have heard, in the public
22 workshops and public comments, unquestionably. That's why
23 it is one of the technical areas on the first workshop we
24 plan to hold toward the end of June. We are coordinating
25 with the air district as well and at this time we expect

1 that they are also going to attend and participate in that
2 workshop.

3 HEARING OFFICER RENAUD: All right, that's good to
4 know, thank you very much.

5 Okay, Commissioner McAllister.

6 ASSOCIATE MEMBER McALLISTER: Just a quick
7 question to staff. Are you monitoring the application
8 that's going on that is being evaluated over at the PUC?
9 Are you aware of that at all? Does that affect your job at
10 all or are you just -- are you taking that into account in
11 your analysis of the project feasibility?

12 MR. SOLORIO: It does not affect our job per se.
13 I know that some folks in our transmission unit are
14 monitoring it. I have seen some documents they forwarded to
15 me, public documents, declarations and such about
16 reliability that results when you add the project to the
17 grid. In general we are not monitoring the proceedings over
18 there, and I assume you are talking about the PPA. Okay,
19 yeah. A PPA is not required. If we get an AFC we evaluate
20 it and we send it up to you guys to make a decision.

21 ASSOCIATE MEMBER McALLISTER: Okay, thanks.

22 HEARING OFFICER RENAUD: Thank you. All right,
23 anything further from Commissioners, Advisors? All right,
24 go ahead.

25 PRESIDING MEMBER DOUGLAS: All right. I just

1 wanted to thank the participants in the status conference.

2 I think these status conferences are really helpful.

3 I am hopeful that the workshops will provide a
4 really constructive forum to get questions answered and to
5 clarify issues where there are points of disagreement so
6 that the issues that come before the Committee for hearing,
7 you know, truly are areas where the parties understand each
8 others' views and do not agree; as opposed to parties being
9 confused about what is being said and so on. So the
10 workshops are really going to be beneficial from that
11 standpoint.

12 So with that we will be, we will be adjourned.

13 Thank you.

14 (The Status Conference adjourned at 3:06 p.m.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said conference, or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June, 2012.

JOHN COTA

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

RAMONA COTA, CERT**478

June 4, 2012